Local Union No. 710, Highway Drivers, Dockmen, Spotters, Rampmen, Meat, Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees, a/w International Brotherhood of Teamsters (United Parcel Service, Inc.) *and* Bradley G. Pletcher *and* Donald Dale Hinkle, Jr. *and* Bill Loomis *and* Brent Butler *and* Timothy Williams. Cases 25–CB–8150, 25–CB–8150–2, 25–CB–8150–3, 25–CB–8150–4, and 25–CB–8180

May 3, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND WALSH

On December 9, 1999, Administrative Law Judge Jane Vandeventer issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Michael T. Beck, Esq., for the General Counsel.
Marvin Gittler, Esq., of Chicago, Illinois, for the Respondent.

DECISION

STATEMENT OF THE CASE

JANE VANDEVENTER, Administrative Law Judge. This case was tried on September 23, 1999, in Goshen, Indiana. The complaint alleges Respondent violated Section 8(b)(1)(A) of the Act by bringing internal union charges, conducting trials, reprimanding, and assessing fines against 27 named union members, which included the Charging Parties, in contravention of a negotiated no-retaliation agreement.[1] Respondent filed an answer denying the essential allegations in the complaint. After conclusion of the trial, the parties filed briefs, which I have considered.

Based on the testimony of the witnesses, including particularly my observation of their demeanor while testifying, the documentary evidence, and the entire record, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent admits United Parcel Service (the Employer) is a corporation with offices and places of business in various States of the United States, and is engaged in the interstate transportation of freight. The Employer operates places of business in Elkhart, South Bend, and Fort Wayne, Indiana, which facilities employ the individuals involved herein. During a representative 1-year period, the Employer performed services valued in excess of $50,000 in States other than the State of Indiana. Accordingly, I find, as Respondent admits, the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits it is a labor organization within the meaning of Section 2(5) of the Act, and I so find.

II. UNFAIR LABOR PRACTICES

A. The Facts

Respondent has represented certain employees of the Employer for approximately 40 to 45 years. These employees work for the Employer at various locations in Illinois, Iowa, and Indiana. While the International Brotherhood of Teamsters (International Union) and other local unions of the International Union represent employees of the Employer throughout the nation, Respondent has maintained a separate contract for the approximately 6000 employees of the Employer whom it represents.

The facts are largely undisputed. The parties stipulated the International Union engaged in an economic strike against the Employer during the period August 4 through 20, 1997. Respondent, however, pursuant to its separate collective-bargaining agreement and an extension thereof, continued to negotiate with the Employer during the period of the International Union's strike without itself calling a strike. Respondent and the Employer completed their negotiations some time in October 1997, without Respondent ever having called a strike in the unit covered by its collective-bargaining agreement.

As was explained by Frank Wsol, Respondent's secretary treasurer, many of Respondent's members participated in the strike called by the International Union by refusing to cross picket lines at other terminals and facilities which they encountered in the course of their driving and delivery duties, and by refusing to handle "struck work" at their own facilities. He explained that "struck work" meant packages which had been shipped in from facilities not covered by Respondent's contract, where the employees were represented by the International Union and were on strike. He further explained this "struck work" began to appear at facilities represented by Respondent about 3 days into the International Union—called strike. In addition, according to Wsol, "roving" picket lines were set up for a few days at a time by the striking unions at some of the

[1] Member Hurtgen adopts the judge's finding that the Respondent entered into a settlement agreement prohibiting only the Employer from imposing any "penalty or discipline." However, Member Hurtgen disavows the judge's observations that the General Counsel's interpretation of the agreement is "strained" or "tortured." Member Hurtgen believes that the language of the agreement is ambiguous. The agreement, as clarified by parol evidence, does not support the General Counsel's case.

[1] At the hearing, the name of one individual, Chuck Hannah, was amended out of the complaint allegation, leaving 26 individuals in issue.

facilities represented by Respondent, and many members refused to cross these lines.

According to the testimony of the four Charging Parties who testified,[2] they refrained from crossing any picket lines which they encountered, but at least two of the four Charging Parties who testified stated they were unaware that they should refrain from handling "struck work," and had not been instructed by any Respondent official to refrain from handling it. Butler, for example, testified that while he was aware the union contract with the Employer gave him the right to refuse to cross a picket line without fear of discipline, he was unaware of the similar right to refuse to handle "struck work." Charging Party Donald Hinkle testified that while he was aware Respondent was advising employees they could and should refuse to handle "struck work," he personally believed the identity of "struck work" was, in his word, "debatable." Thus, they continued to deliver or transport packages as assigned. It is undisputed, and the Charging Parties admitted, that Respondent's collective-bargaining agreement with the Employer contains provisions stating employees have the right to honor picket lines and to refuse to handle "struck goods."

There is no contention that any of the 26 named individuals resigned from Respondent or attempted to do so at any time during the events described herein.

After the end of the strike, Respondent continued its negotiations with the Employer. According to Wsol, however, Respondent had been informed by a number of members that they had been threatened with discipline by agents of the Employer because of their support of the International Union's strike. Consequently, on September 4, 1997, Respondent presented the Employer with a proposal concerning such discipline which Respondent had drafted. The proposal was printed on Respondent stationery and read as follows:

> SETTLEMENT MEMORANDUM
>
> This Settlement Memorandum is made by and between Teamsters Local 710 (710) and United Parcel Service (the employer) as follows:
>
> WHEREAS, the International Brotherhood of Teamsters and the employer have arrived at a settlement and mutually satisfactory agreement on outstanding issues involved in the dispute; and
>
> WHEREAS, 710 and the employer agree that it is in the best interests of the employer, 710 and all employees to eliminate any disharmony, ill will and/or hard feelings and to restore an efficient and cooperative work environment,
>
> NOW, THEREFORE, 710 and the employer hereby agree as follows:
>
> 1. No U.P.S. employee shall be discriminated against, disciplined or suffer any adverse employment action for engaging in peaceful activity during or in connection with the dispute.
> 2. All employees in the unit represented by 710 shall be returned to employment without discrimination or loss or reduction of wages and/or benefits and with full preservation of all seniority and other rights, and no penalty or discipline of any sort shall be suffered by any such unit employee because of his/her choices, decisions, actions and/or activities during the dispute or in any way siding, assisting or otherwise supporting 710, the International Brotherhood of Teamsters or any other party involved in the dispute.
>
> IN WITNESS WHEREOF, the parties have executed this Settlement Memorandum on this 4th day of Sept, 1997.
>
> | | |
> |---|---|
> | UNITED PARCEL SERVICE | TEAMSTERS LOCAL 710 |
> | ss/Gerald A. Nerone | ss/Frank J. Wsol |

Testimony concerning the negotiation of the above document was admitted over the objection of the General Counsel. Wsol testified that on September 4, Respondent presented the document to the Employer with the explanation that it had received complaints from its members that they were experiencing threats of discharge for having honored the picket lines during the recent strike by the International Union. Respondent stated to the Employer that it wished to have a written agreement to protect its members from actions by the Employer. There was apparently very little discussion of the document, and after denying there had been such threats, the Employer agreed to the document and signed it. Wsol further testified that the protection sought by the document was solely protection against Employer actions. Michael Sweeney, Respondent's recording secretary, testified the "other parties" referred to in the last paragraph of the document refers to the International Union and other local unions representing the Employer's employees. Both of these witnesses testified that only potential actions by the Employer were discussed, and there was no mention of internal union charges nor of any other potential actions by Respondent. Gerald A. Nerone, the employer representative who signed the document, was not called to testify by either party, and hence the facts testified to by Wsol and Sweeney as to the discussions surrounding the negotiation and execution of this document are uncontradicted in the record.[3]

Negotiations for a contract were concluded in October 1997. After the end of negotiations, various individual members of Respondent filed internal union charges against other members whom they believed to have violated Respondent's strictures against crossing picket lines and handling struck work during the International Union's strike. Notice was given to the members charged, and hearings were conducted before panels of Respondent members, with an official of Respondent present as

[2] Charging Party Timothy Williams did not testify, nor did he appear at the hearing.

[3] Respondent, in its brief, contends the General Counsel's failure to call Nerone as a witness entitles it to an adverse inference, i.e., that had Nerone testified, his testimony would support that of Respondent's two witnesses. The Employer was a party to the Settlement Memorandum, but did not file the instant charges or otherwise seek to enforce the agreement against Respondent. In view of the fact the Employer was not clearly aligned with either party, and Nerone was equally available to the General Counsel and Respondent, I decline to draw the requested inference.

moderator or convenor of the panels. Sweeney testified there were over 100 hearings conducted, but that he was unaware of the exact number of these hearings.

A number of members, including the 26 individuals named in the complaint, were charged under these procedures. Some of the individuals charged were found not to have violated the constitution, and the charges against them were presumably dismissed. The 26 named individuals were found by the panels to have violated the constitution, and were assessed fines in varying amounts between $100 and $2455. It was stipulated by the parties that none of the fines or discipline assessed against the individual members interfered with their employment relationship in any way.

Under Respondent's procedure, as set forth in the International Union's constitution and its own constitution and bylaws, the executive board may overturn the decision of the hearing panels. In addition, there is an internal appeals process by which the member may appeal the fines. There is no evidence as to how many of the 26 named individuals took advantage of this appeals process. Of the four Charging Parties who testified, all appealed or attempted to appeal their fines through Respondent's internal procedures. There is no evidence that any of the five Charging Parties, nor any of the 21 other named individuals, resigned or attempted to resign from membership in Respondent at any time.

There is no evidence the Employer has sought to enforce the Settlement Memorandum against Respondent, whether by grievance, unfair labor practice charge, or a contract enforcement action in State or Federal court. Likewise, there is no evidence as to the Employer's views on the reach of the Memorandum, i.e., whether it applies to the Employer only or to both the Employer and Respondent.

B. Discussion and Analysis

The General Counsel argues that the Settlement Memorandum constitutes a bilateral settlement agreement which prohibits Respondent, as well as the Employer, from disciplining employees for any conduct which occurred during the strike. The Board has held that where a bilateral strike amnesty, or "no-retaliation" agreement, has been negotiated between the parties to a strike, the union may not discipline or fine its members for conduct during the strike, and that the internal rules proviso of Section 8(b)(1)(A) does not apply in this situation. See, e.g., *Teamsters Local 792 (Johnson Bros.),* 283 NLRB 111 (1987); *Sheet Metal Workers Local 208 (Paul Mueller Co.)*, 278 NLRB 638 (1986).

Respondent, on the other hand, argues the Memorandum bars only the Employer from taking any disciplinary action against employees for conduct engaged in during the strike, but does not contain any undertakings by Respondent. In the absence of such an undertaking by Respondent, it urges that its disciplining and fining of its own members falls within the internal union rules proviso of Section 8(b)(1)(A), and does not violate the Act. Where, as here, the union discipline did not interfere with the employment relationship, it is not the Board's province to evaluate the fairness of union discipline meted out to protect a legitimate union interest, Respondent argues, citing *NLRB v. Boeing Co*., 412 U.S. 67 (1973), and *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967).

The crux of the case, then, is the meaning of the Settlement Memorandum. There is a further difference of opinion concerning the evidence to be used in determining this crucial issue. The General Counsel argues the parol evidence rule prohibits the consideration of extrinsic evidence, in this case evidence concerning the negotiation of the Memorandum and the intent of the parties. The General Counsel would limit the search for meaning in this document to the actual language of the document itself, and would ignore any evidence of the intentions of the parties or of the negotiations which resulted in the document.

Respondent argues that the admission of extrinsic evidence is appropriate because its purpose is to interpret the language and meaning of the Memorandum, and that such evidence is essential to a correct interpretation of certain terms in the Memorandum.

While it is true that the parol evidence rule does prohibit the consideration of evidence which varies or contradicts a writing, it does not prohibit the consideration of evidence outside the document itself for the purpose of interpreting the writing. *Sansla, Inc*., 323 NLRB 107, 109 (1997); *Inter-Lakes Engineering Co*., 217 NLRB 148, 149 (1975).

I find the argument of Respondent concerning the evidentiary issue is more persuasive. The parol evidence rule excludes extrinsic evidence concerning a written contract only when the meaning of the document is clear. It does not exclude such evidence when the meaning of certain terms in a document are ambiguous. Several terms in the Settlement Memorandum are less than crystal clear. For example, the term "dispute," the phrase "any other party" in the last paragraph, and the term "penalty or discipline," are not defined within the language of the Memorandum itself, and are susceptible to more than one interpretation. Therefore, the evidence concerning the drafting, presentation, discussion, negotiation, and execution of the Memorandum at issue was admitted for the purpose of interpretation of the meaning of the language and terms of the Memorandum.

At first reading, and without considering any extrinsic evidence, the Settlement Memorandum appears to apply to the Employer, and to prohibit the Employer from disciplining or penalizing employees in connection with their employment because of their support of the International Union's strike. The sentence numbered "1" clearly refers to discrimination or discipline related to employment. Likewise, the first portion of the sentence numbered "2" clearly refers to employees being returned to employment without discrimination or other detriments to their *employment* and it would be logical to read the remainder of the same sentence as continuing to refer to the same type of discrimination.

The General Counsel, however, argues the language of the second portion of the last sentence of the agreement, "no penalty or discipline of any sort shall be suffered by any such employee because of his/her choices, decisions, actions and/or activities during the dispute or in any way aiding, assisting, or otherwise supporting 710, the International Brotherhood of Teamsters or any other party involved in the dispute," refers to

more than simply discrimination or discipline by the Employer. The General Counsel argues that it also means the Employer is a "party," and hence is included in the term "any other party." Likewise, the General Counsel argues the words "no penalty or discipline of any sort" means that no fines or other penalties by Respondent may be imposed for any activities "supporting . . . any other party," a term which includes the Employer. The General Counsel's argument depends further on the phrase "aiding, assisting, or otherwise supporting" being interpreted to include employees' work activities in the course of their employment. This seems a strained, but possible, interpretation of the language of the agreement, but at the same time, the argument that such an interpretation should be made emphasizes the need for elucidation of the language by extrinsic evidence, and undercuts the General Counsel's argument the language of the agreement is clear, and therefore the parol evidence rule should bar consideration of such extrinsic evidence.

The general rules of contract interpretation militate against the General Counsel's argument. As succinctly set forth by Administrative Law Judge Schlesinger in *Don Lee Distributor,* 322 NLRB 470, 485 (1996):

> That rule of interpretation [ejusdem generis] provides that "general words following a detailed enumeration will be confined to things of the same kind . . . as the particular matters mentioned," 18 Williston, *Contracts* Sec. 1968 (3d ed. 1978); *Black's Law Dictionary* at page 517 (6th ed. 1990); and specific words following general ones restrict application of the general term to things that are similar to those enumerated. 2A Sutherland, *Statutory Construction* Sec 47.17 (1992 rev.).

Applying these principles to the disputed second sentence of the Memorandum, the second clause, referring to "penalty or discipline" is confined to *employment* penalty or discipline, since the first portion of the sentence refers only to penalties or discipline in the employment relationship.

The Settlement Memorandum was not part of the settlement of the collective-bargaining agreement between Respondent and the Employer. Instead, it was executed prior to the end of negotiations, and was intended to deal with a particular problem, i.e., Respondent's perception that the Employer was discriminating or threatening to discriminate against employees because of their participation in a sympathy strike in violation of the current extended collective-bargaining agreement between them. The Memorandum therefore differs in its inception from the bilateral no-retaliation agreements in the cases cited at the beginning of this discussion.

Turning to the evidence concerning the drafting and negotiation of the Memorandum, it is noted initially that Respondent drafted the agreement, and its proffered language remained unchanged by the Employer. Respondent's representatives testified that in drafting and proffering the Memorandum, they intended to secure a guarantee by the Employer that it would not discriminate in employment-related matters against employees. It is undisputed that no promises or undertakings by Respondent were contemplated, discussed, nor agreed to by Respondent and the Employer. The Employer did not request Respondent to agree to any such terms, nor did it request any changes in the language of the Memorandum.

The General Counsel's argument that "penalty or discipline" refers to internal union charges under Respondent's internal union procedures is contrary to a logical reading of the document and the principles of contract interpretation, as well as the evidence concerning the intentions of the parties, the drafting and negotiation of the Memorandum. I reject it. Likewise, the General Counsel's argument that the term "other parties" should include the Employer is flawed. The Employer is specifically referred to in the document as "the employer." Sweeney testified without contradiction that "other parties" was meant to refer to other local unions who had struck the Employer.[4] This argument also depends on an assumption that the phrase "in support of" a party includes reference to employees choosing not to take advantage of their contractual rights to refuse to cross picket lines or handle struck goods, and that such actions by employees would be "in support of" the Employer. Such an interpretation is more than strained; it is tortured. I reject it.

I find the Settlement Memorandum was a unilateral agreement which bound the Employer to refrain from imposing any "penalty or discipline" in employment, but did not bind Respondent. Thus, the cases cited above concerning mutual or bilateral amnesty agreements are inapposite to the agreement in question here. I find, in agreement with Respondent's position, that its actions were within the ambit of the union rules proviso to Section 8(b)(1)(A).

ORDER

It is recommended that the complaint be dismissed in its entirety.[5]

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[4] The General Counsel argues in its brief that Wsol's admission that the Employer was in fact a "party" to the International Union's dispute which resulted in the strike is tantamount to an admission that the words "any other party" in the Settlement Memorandum also included the Employer. Both Sweeney and Wsol testified specifically that these words were not intended to include the Employer, and that it was referred to in the document only by the words "the employer."

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.